

## **Administrative Issues**

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### **Introduction**

The Victims of Crime (VOC) Program can be a valuable resource to crime victims who wish to obtain outpatient psychotherapy to ameliorate the effects of the crime. The therapist who is treating a crime victim can be a guide for the client throughout the process of filing a VOC application, tracking the approval of the application and participating in the appeal process if the application is denied. However, in filling the role of guide, the therapist must keep the boundaries clear in interactions with the client. Clarification of roles and boundaries is accomplished by consistently reinforcing for the client that the responsibility for applying for the VOC Program and ultimately obtaining approval of the application lies solely with the client. This chapter provides the therapist with information on eligibility criteria, the claim approval process, the process to follow if claims are denied, and the submission of bills. The therapist also gains information on how to assist clients in understanding which services are reimbursed by the VOC Program and how these limitations impact treatment planning. Required documentation of services provided, including initial and extended treatment plans and the quality assurance functions of the VOC Program are also discussed.

### **Determining Eligibility**

There are six basic areas of consideration for determining eligibility for the Victims of Crime (VOC) Program. These are:

- Residency Status
- Nature of Crime
- Victim Category
- Cooperation with authorities
- Involvement in events leading to crime
- Participation in the crime

### **Residency Status**

Any California resident who becomes the victim of a crime within the state of California is eligible for the VOC Program from California, if all other requirements are met. A California resident who is a victim of crime in another state or country is also eligible for the VOC Program from California, if all other requirements are met. The victim may also be eligible for the VOC Program from the state where the crime occurred. When this is the case, responsibility for reimbursement is sometimes divided between the two states. The state in which the crime occurred has primary responsibility for coverage. A resident of another state who is victimized in California can also qualify for the VOC Program through California. A minor's residency status follows that of the parent or legal guardian.

### **Type of Crime**

A qualifying crime is any crime in which there is threat of physical injury, physical injury or death. For example, physical and sexual abuse of children and domestic violence are generally qualifying crimes. A juvenile offense that would be a crime if committed by an adult may be a qualifying crime. An incident may traumatize a child, but may not be considered a qualifying crime for VOC purposes. For example, a child may observe a drive-by shooting in the neighborhood, but unless the assault was against the child or a family

member, the child would not be eligible for the VOC Program, unless they felt personally at risk of assault. For the provider to determine whether a client is eligible for the VOC Program, the provider must determine whether the client is the victim of a qualifying crime. For the purposes of gathering information to make that determination, parents should usually be considered the primary source of information on their child's history. However, it is prudent to consider that during the crisis, the parents may not have obtained all information regarding the perceptions of law enforcement or Child Protective Services regarding the substantiation of the crime. For example, at the conclusion of the investigation, the parent may be left with the impression that the investigation will be pursued, when in fact, a crime report was not filed or the case was not referred to the District Attorney. Verification of the parents' perception of the crime and additional types of information can be obtained from law enforcement or the District Attorney's Office. Such advocacy efforts for parents and children can assist them in obtaining additional information on the crime.

Crimes of sexual abuse and physical abuse can be documented by the following:

- A sustained juvenile court petition containing allegations of sexual or physical abuse
  - Medical or physical evidence of abuse
  - A law enforcement or CPS report concluding abuse occurred
  - A credible witness who can corroborate the abuse
  - A juvenile court order removing the child from the home due to abuse
- Filing of criminal charges of child abuse

A child who is abuse-reactive but who is not making clear disclosures of sexual abuse may qualify for the VOC Program if there is sufficient evidence that the child was a victim of a qualifying crime. However, specific documentation of sexually reactive behavior is necessary. Such documentation can be difficult to obtain. One type of documentation that supports sexual abuse is observation by a neutral party of age-inappropriate sexual behavior by the child. A teacher who observes repeated inappropriate and explicit sexual behaviors by a child can usually be considered a neutral party. However, these types of cases can be very difficult to substantiate for VOC eligibility. Consultation with a Victim Witness Assistance Center (VWAC) or a VOC Program staff person may be helpful.

Children who witness an incident of domestic violence may qualify as direct victims. A child has witnessed an act of domestic violence if the child saw or heard the act. There are several ways in which the child's direct exposure to domestic violence can be documented. Among these are:

- Documentation from law enforcement that the child saw or heard the violence
- A child's call to 911
- A written statement from an eyewitness
- A written statement from a counselor at a domestic violence shelter
- A restraining order requiring the perpetrator to stay away, accompanied by documentation that the children were threatened with injury
- A reliable statement from the child that he or she saw or heard the domestic violence

Family abduction can be considered a qualifying crime if it occurred on or after January 1, 1999. The child must be away from the custodial parent for at least 30 days.

Generally, crimes involving vehicles are not qualifying crimes. However, the following exceptions are qualifying crimes:

- Intentional injury or death inflicted through the use of a vehicle
- Injury or death by a drunk driver or driver under the influence of illegal drugs

- Injury or death as a result of a hit and run driver
- Vehicular manslaughter

As of August 1998, unlawful sexual intercourse (statutory rape) is considered a qualifying crime if felony charges are filed. There are no qualifying derivative victims as a result of this category of crime.

## **Victim Categories**

For purposes of the Victims of Crime Program, victims are categorized as direct or derivative victims. Direct victims are those who were injured or threatened with injury by a criminal act, or who died as a result of the crime. Derivative victims include the parents, siblings, children, and spouse of the victim, or anyone who lived in the household of the victim at the time of the crime, and any family member or the fiancé of the victim who witnessed the crime. Derivative victims also include any person who previously lived in the victim's household for at least two years and who had a relationship substantially similar to that of a parent, sibling, spouse or child of the victim.

If the qualifying crime occurred after September 21, 1998, an individual who became the primary caregiver of a minor victim after the crime occurred may qualify as a derivative victim but only when their treatment is necessary for the treatment of the victim. This includes foster parents or relative caregivers who accept a child who is a direct victim into their home. As of August 1998, a relative living in another state may be eligible for \$3,000 in outpatient mental health treatment from VOC as a derivative victim. If victimized by several crimes, it is possible for a victim to be categorized as either a primary or derivative victim on each of the crimes. For example a child may be a direct victim of abuse. If a sibling is a direct victim of a different crime, he or she may be a derivative victim relative to his or her sibling.

## **Cooperation with Law Enforcement and Involvement in the Qualifying Crime**

In order to qualify for the VOC Program, the victim must cooperate with law enforcement's investigation and with the prosecution of the case. A minor victim cannot be found ineligible for the VOC Program even if it is determined that the child did not cooperate in the investigation or prosecution of the qualifying crime.

If a parent, who is a derivative victim, fails to cooperate with law enforcement, the child may still be eligible for the VOC Program. Under these circumstances, the parent usually is not eligible for benefits. It is advisable to discuss directly with the Victim Compensation Board whether a parent who has not cooperated with law enforcement would be eligible before submitting any bills for payment. The victim or a minor victim's parent must also cooperate with the Victim Compensation Board in the processing of the application.

## **Involvement in Events**

A perpetrator of the qualifying crime is not eligible for the VOC Program under any circumstances (participation). A victim may not be eligible for the VOC Program if he or she was involved in the events leading to the qualifying crime. For example, an assault victim may not be considered eligible for the VOC Program if he or she made remarks to the perpetrator that were found to have instigated the assault. Anyone who has a record of a felony conviction is not eligible for the VOC Program for losses incurred while incarcerated, on probation or parole related to the conviction.

## **Explaining the VOC Program to Clients**

When a client enters treatment with the expectation that his or her therapy expenses will be reimbursed by the VOC Program, it is important that the client understand that the therapist cannot provide a definitive answer about eligibility for the VOC Program. If the client states that he or she has filed an application, it would be appropriate to ask if they have been assigned a claim number in order to facilitate communication with the VOC Program.

The therapist may be in a position to assist the client by providing information supporting the claim, but this should be done only with the knowledge and cooperation of the client. It is important to comply with the statutes that regulate the release of child abuse information, including child abuse reports and mental health and physical examinations of child abuse victims.

Clients should understand that only treatment that is necessary as a direct result of the qualifying crime can be reimbursed by the VOC Program. In developing a treatment plan and goals with a client, it is important to include other resources that can be used for conditions that are not directly related to the qualifying crime.

## **Applying for the VOC Program**

There are three ways in which a victim may apply for the VOC Program:

- Through a private representative, usually an attorney
- Through the Victim Witness Advocate Office, usually located at the District Attorney's Office
- Through the Victim Compensation Board by filing an application directly

A custodial parent or legal guardian must file the application on behalf of a child victim. The VOC Program may ask for documentation that confirms the applicant is the custodial parent or legal guardian of the child. A child who is a dependent of the Juvenile Court may qualify for the VOC Program if he or she is the victim of a qualifying crime. The dependent child's social worker or another person designated by the Court must submit an application to the VOC Program.

The VOC application must be submitted by the child victim's 19th birthday. An adult must apply within one year of the date of the crime. If information is presented to the California Victim Compensation and Government Claims Board (CVCGCB) that there was good cause for a delayed application, an application may be accepted up to the 21st birthday for a child victim, or up to three years following the qualifying crime for an adult.

The Board may grant an extension of the above three-year limit under the following circumstances

- The application is filed within one year from the date of the filing of an indictment, information, or complaint alleging the facts of the qualifying crime.
- The victim is called to testify in a criminal proceeding adjudicating the facts of the qualifying crime, and the application is filed within one year of the completion of the victim's testimony.
- The application is filed within one year of the time that a formal written decision is made by the prosecuting attorney not to prosecute.

In all three circumstances, the prosecuting attorney must recommend that the Board find that the applicant cooperated with law enforcement and the prosecuting attorney in the apprehension and prosecution of the person charged with the crime, or in the investigation and consideration of the crime, and the Board must concur.

It is possible that an applicant may be the victim of multiple crimes. A victim may file an application for each qualifying crime. However, for purposes of the VOC Program, multiple incidents of the same type of abuse by the same perpetrator against the same victim constitute one qualifying crime. In completing a developmental history of the client, it is helpful to assess for the occurrence of other crimes that could qualify the client for additional VOC claims. This process is viewed as appropriate client support and advocacy because multiple forms of victimization may predict more complex traumatization, which requires a longer period of therapeutic intervention. Approval of multiple claims provides the victim with additional funds to cover mental health and medical expenses (see Submitting Bills below).

## Application Processing

Once an application for the VOC Program has been submitted, the Victim Compensation Board assigns it a claim number. This number is used to track the claim through the approval process and to track any information related to that claim, including bills. Assignment of this number does not mean the Board has approved the claim. It only signifies that the claim has reached the CVCGCB and that the application is being processed.

In supporting clients through the VOC application process and in preparation for establishing billing procedures, the therapist should consider setting up an in-office tracking system for the claim. A system should be used to record when the Board requests additional information, when that information was provided and if other funds are available to the client for reimbursement of mental health expenses. The client is ultimately responsible for submitting the information that is necessary to approve the claim. Assistance provided in this process can be considered client advocacy. The therapist is in no way responsible for the approval of the claim. The client should be regularly reminded of this while the application is being approved.

The Board will make a determination about the eligibility of the claim. In every case the client will be notified of the staff recommendation. These recommendations are made by the program's claims processing staff to the Victim Compensation Board. If the recommendation is to allow the claim, the Board approves these recommendations on a batched or "consent" basis. Official notification comes in the form of a letter from the Board to the victim, or to the victim's representative, if there is one.

If a claim is denied, the client is notified through a letter containing a brief explanation of the denial. The client is given an explanation of what is needed to sustain the application and the appeal process.

## Reimbursement of Expenses

The Victim Compensation Board now reimburses medical and mental health expenses up to the following amounts:

| VICTIM CATEGORY  | TYPE OF SERVICE  | AMOUNT   |
|--|--|--|
| Direct victim  | Inpatient mental health  | Up to \$70,000   |
|  | Outpatient mental health   | UP TO \$10,000.<br>A victim of unlawful sexual intercourse is limited to \$3,000 for mental health only. |
| Derivative victim who is a current primary caregiver (not caregiver at time of crime) eligible for \$3,000 | Outpatient mental health<br><br>Only if necessary for treatment of victim. | Up to \$3,000  |
| Derivative victim (parent, sibling, child, spouse, fiancé) to victim of homicide                           | Outpatient mental health   | Up to \$10,000   |
| Primary caretaker of a sexual or physical abuse victim   | Outpatient mental health   | \$10,000 shared between no more than two primary caretakers.   |

The maximum reimbursement rates to professionals providing mental health services are as follows:

| Provider   | Amount Per 45–60 minute session               |
|--|---|
| Psychological Assistants, Assistant Social Workers, or MFT Interns | Will be paid at the rate of their supervisor. |
| LCSW or MFT  | \$90*   |
| Psychologist   | \$110*  |
| Psychiatrist   | \$130*  |

*\* For services on or after 3/1/01. For services prior to 3/1/01, previous rates apply (MFTs, LCSWs \$70. Psychologists and Psychiatrists \$90).*

Charges for group therapy are reimbursed at 40% of the above rates.

All treatment for which bills are submitted must be necessary as a direct result of the qualifying crime. Treatment for preexisting conditions, including psychiatric diagnoses, medical conditions and substance abuse, may not be considered to be necessary as a direct result of the qualifying crime. Additional types of preexisting conditions include ongoing parent-child conflicts, marital conflict, and developmental disorders. The therapist should evaluate such conditions when determining the percentage of the treatment that is necessary as a direct result of the qualifying crime.

Individual, family and group therapy services, which are necessary as a direct result of the qualifying crime, are eligible for reimbursement.

The cost of psychological testing, within reasonable limits, may be reimbursed if it is necessary as a direct result of the qualifying crime. Common reasons for psychological testing being requested and reimbursed by the VOC Program include:

- The client does not appear to be making progress in treatment.
- A thought disorder or an organic condition is suspected.
- The therapist is requesting assistance with differential diagnosis.

A copy of the testing report may be requested before reimbursement is made.

Evaluation for medication is reimbursable if the symptoms for which the medication is being prescribed are a direct result of the qualifying crime. Depression and anxiety are perhaps the most frequent crime-related symptoms for which medication is considered.

## **Emergency Relocation and Loss of Income Awards**

An emergency award may be made to a direct or derivative victim for specific types of expenses. Emergency awards may be made to victims who need to relocate as a result of a domestic violence qualifying crime. Such expenses include:

- Deposits for utilities and telephone service
- Deposits for rental housing, not to exceed the first and last month's rent or \$2000, whichever is less
- Temporary lodging and food expenses, not to exceed \$1000
- Clothing and other personal items, not to exceed \$500

Emergency awards may also be made in the event of loss of income due to injuries resulting from the qualifying crime. There is a limit of \$2000 for emergency awards.

Victims may be reimbursed for their loss of income for up to five years after the date of the crime. Dependents of a deceased or disabled direct victim may receive funds for loss of support up to five years after the crime. In the event the victim is permanently disabled, there is no time limit. Only those medical or mental health providers qualified to receive payments by the VOC Program can sign a disability statement. A minor may receive reimbursement for loss of support up to age 18. The total amount of income or support that can be reimbursed for each qualifying crime is \$70,000.

## **Dire or Exceptional Funding**

Under the Dire or exceptional provision of the law, direct or derivative victims who reach the maximum award for outpatient mental health reimbursement can qualify for additional funding from the VOC Program, provided they meet certain criteria. When claimants have reached or will soon reach their award limit for mental health reimbursements, under this provision they may request additional funding for mental health treatment. The VOC Program will grant only those requests for additional funding in which the qualifying crime or the claimant's symptoms are dire or exceptional.

## **Submitting Bills**

Before bills are submitted, an Initial Treatment Plan form must be submitted. These forms are easy to complete by following the instructions in each section. An Axis I diagnosis is not required for treatment expenses to be reimbursed. V codes may be used. However, a multi-axial diagnosis is required. The submission of the Initial Treatment Plan (ITP) assists the CVCGCB staff in evaluating whether the treatment is necessary as a direct result of the crime.

It is essential that the therapist and the therapist's supervisor be eligible to be reimbursed by the VOC Program. See the "Provider Qualifications" chapter for more information. If the therapist's license or registration as an intern is not valid, or the treatment is determined not to be necessary as a direct result of the qualifying crime, the bills submitted for payment will not be reimbursed. Those who are considered eligible to bill for psychotherapy services are:

- Marriage and Family Therapists (MFT)
  - Marriage and Family Therapist Interns (IMFT)
- Licensed Clinical Social Workers (LCSW)
  - Associate Social Workers (ASW)
- Licensed Psychologists
  - Supervised Psychology Interns (predoctoral) in a university hospital or medical center clinic (under Section 2911 of the Business and Professions Code) or an individual pursuing a postdoctoral training in that setting for the purpose of achieving higher clinical competency.
  - Registered Psychological Assistants
  - Registered Psychologists providing services in a nonprofit community agency per Section 2909(d) of the B&P Code.
- Psychiatrists

Charges for therapy services should be submitted monthly. Bills submitted more than three years after the services were provided will not be reimbursed. Current Procedural Terminology (CPT 4) codes should be used in billing. The mental health billing verification form (B/V) and the Health Insurance Claim Form (HCFA) are the forms on which charges should be submitted; either form can be used. Instructions on the



back of the B/V form are complete and easy to follow. All of the information obtained during the client intake process will be useful in completing the billing process including:

- Insurance held by the client, which can reimburse psychotherapy expenses.
- Treatment for preexisting conditions that is not necessary as a direct result of the qualifying crime

Individual and group sessions should be billed on the client's individual claim. Family sessions should be billed on the direct victim's claim. If the victim has multiple claims, expenses should be billed on the most recent claim without attempting to divide the percentage of treatment related to each qualifying crime.

A collateral contact is a contact with a significant other in the client's life. The contact is for purposes of enhancing the treatment or for gathering information about the client's functioning. Collateral contacts may be reimbursed if they are necessary as a direct result of the qualifying crime. To justify the expense, document why the collateral contact is necessary as a direct result of the crime and how it is related to the victim's recovery.

The VOC Program does not reimburse for expenses incurred for treatment of the perpetrator. Family sessions in which the offender is present specifically for the purpose of making amends to the victim are the only sessions including a perpetrator that may be paid. The therapist may be asked to provide information on the purpose and goals of any session which includes the perpetrator to ensure that the treatment is focused on the needs of the victim and is not focused on the treatment of the perpetrator.

An adult client or the parent or legal guardian of a minor client must sign the B/V form. While this is necessary for the VOC Program, it also serves the purpose of notifying the client of charges being submitted. If an adult client or the parent or legal guardian for a minor client cannot be located at the time bills are submitted, the therapist may sign the B/V form, certifying that every effort was made to find the appropriate person. The patient should initial each date of service provided. If the therapist is not a licensed provider, the supervising therapist must co-sign the B/V form. The CVCGCB can ask for documentation that the intern received supervision by a licensed clinician during the time that the services were provided. It would be prudent to maintain documentation of dates of supervision sessions, with signatures of the supervisor and supervisee. Copies of the B/V forms may be submitted, as long as the signature of the provider and clients are originals. It is important to establish a billing cycle, which includes regularly obtaining client or client caretaker signatures and initials. If this is not done regularly, the client may not be available to sign the form at the time the bills are ready to be submitted.

Although the victim is free to select any qualified mental health provider (see the Provider Qualifications chapter), if the chosen provider is eligible for reimbursement from the victim's insurer, the VOC Program will always be the payor of last resort. If the insurer denies reimbursement, a documented denial of eligibility for payment must be submitted with the bills to the VOC Program.

Financial audits may be conducted within any agency that is a member of an NPA with the Victim Compensation Board. If a financial audit is announced, a list of patient files is sent to the agency shortly before the audit is conducted. Personnel from the audit division of the CVCGCB will conduct the audit on site at the agency. The auditors will review files for the following issues:

- Do the charges submitted match the type of session documented in the progress notes?
- Is the therapist who signed the B/V form the therapist who signed the progress note?
- Was supervision provided during the time frame the client was seen by an intern?
- Were all other sources of reimbursement billed prior to submitting bills to VOC?



## **What to Do When a Claim is Denied**

When the eligibility of a claim is denied, the Victim Compensation Board notifies the applicant (client) with an explanation of the reasons the claim was denied. If the claim was filed through an attorney representative, the representative will receive a copy of the staff recommendation. If the claim was filed through a VWAC, both the victim and the VWAC will receive a copy of the recommendation. The representative may forward this to the therapist. It is important that the client is prepared to actively engage in the appeal process as they often have access to information that may be crucial to the appeal.

Common reasons for the denial of a claim are:

- Lack of verification that a qualifying crime occurred
- Verified crime does not qualify
- A claimant who is applying as a derivative victim does not meet the eligibility criteria
- Application was submitted beyond the time limit allowed after the crime occurred

When a client receives notification that the CVCGCB staff recommends denial of the claim, the client must notify his or her representative and the VOC Program that the client wishes to appeal the decision. It is important to comply with the deadline for responding to this notice. Subsequently, a hearing date will be set. It is also important to remember that if the client continues in treatment, all bills may be denied for payment by the CVCGCB. A plan should be made with the client regarding payment of any accumulated charges for services. If additional information can be submitted before the hearing to support approval of the claim, the claim may be approved before the hearing is held. The need for a hearing would then be eliminated.

An appeal is more likely to be successful if it addresses the reason for the denial of the claim stated in the staff recommendation. When the client has a representative, that person should provide direction on how to prepare the appeal. Any information that rebuts the information on which the Board has based its denial should be submitted in the appeal. For example, if the claim was denied because VOC staff could not verify that a qualifying crime occurred, a letter from a minor victim about the client's victimization can be compelling. Similarly, a letter from a mediator or a court order issued from Family Court that restricted visitation due to abuse or exposure to domestic violence can be useful in verifying the occurrence of a crime.

If the response to CVCGCB staff's recommendation for denial does not resolve the issue and the victim, and/or their representative wishes to appear at a hearing, the claim is then scheduled for a discussion hearing. The three members of the Victim Compensation Board hold this hearing and the applicant has the right to attend and provide testimony. Personal testimony from a minor victim can be compelling. Whether a minor victim should attend the hearing is a clinical decision, which should be made with the minor client and caretaker. The therapist may accompany the client to provide support and information that might lead to approval of the claim. When the hearing is conducted, the applicant can present additional information to support approval of the claim. The members of the Board can ask questions of the witness. Prior to the hearing, it should be discussed with the client that the Board may rule to uphold the denial recommendation or to overturn that recommendation; preparing the client for either decision is suggested. After the Board hears all information, the members make a decision about upholding the program recommendation or may support the victim's claim.

## **What Is QAMH?**

The Quality Assurance Mental Health unit (QAMH) within the Victims of Crime Program consists of a licensed clinical psychologist and other staff who are trained in mental health issues. The primary goal of QAMH is to provide consultation to Victim Compensation Board staff so that fair and informed decisions can be made regarding mental health issues. QAMH reviews complex cases and evaluates the efficacy of treatment methods that are not considered standard or proven. QAMH assists CVCGCB staff with determining whether mental health treatment expenses are necessary as a direct result of the qualifying crime.

A Peer Review Committee composed of mental health professionals from across the state provides consultation to QAMH. Members of the Peer Review Committee are familiar with the VOC Program and have experience treating crime victims. The Peer Review Committee provides consultation on issues such as:

- Whether additional treatment should be reimbursed
- Whether consultation should be obtained
- Whether the treatment appears effective

When reviewing cases, members of the Peer Review Committee are provided with all treatment information that has been forwarded to the Victim Compensation Board by the provider.

## **Assessing Treatment Progress**

Progress in treatment should be evaluated every six months that the client is in treatment. Standardized assessment tools can be used to assess a client's progress. The Extended Treatment Plan (ETP) is used to document the client's progress in treatment. The ETP should be sent to the Board at 25-session intervals.

The following issues will be evaluated to assess treatment progress:

- Has a change occurred in the percentage of treatment, that is necessary as a direct result of the crime?
- Has the client been making progress in treatment as measured by the established goals? What percentage of the goals has been achieved?
- If progress in treatment has not been made, what steps have been taken to reevaluate the treatment plan? Examples include psychiatric consultation, medication assessment, psychological evaluation, and consultation on developmental or cultural issues which might be barriers to successful treatment
- Have standardized assessment tools measured progress in treatment?
- Has the client been involved in the assessment of progress in treatment?

For more information, see the chapters on "Assessment" and "Evaluating Treatment Outcome."